

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

IN RE: A.C. C.

Charles E. Chapman and Margaret L. Chapman, Parents/Co-Guardians  
of Alexander C. Chapman ("A.C.C." or "Alex"); Alexander C. Chapman Plaintiffs

V.

Civil Action: 1:17-CV-0075-HSO-JCG

RevClaims, LLC, a Mississippi LLC Entity;  
Memorial Hospital at Gulfport ("MHG"), a Mississippi Entity;  
United Health Care Services, Inc. ("UHC") and OPTUM (Putative Assignees of  
Putative Claims of the Welfare Plan Committee of Lowe's Companies, Inc.  
and/or Lowe's); Lowe's Welfare Plan and JOHN DOES 1 - 5 Defendants

**Motion to Remand**

Plaintiffs, pursuant to law, *inter alia*, **28 U.S.C. §§ 1441, 1446-7** and **L.U.Civ.R. 5(b)**, move to remand this case to Harrison Co., MS Chancery Court for good cause shown here and in the Plaintiffs' accompanying **Memorandum**, *inter alia*, the following:

1. Defendants fatally failed to comply with 28 U.S.C. §§ **1441-7** and **L.U.Civ.R. 5(b)** and Defendants failed to complete *removal* in the prescribed 30 days' [and 14-days'] time:

[A] Defendants failed to duly, **timely file joinders [consents]** in removal of **all** Defendants in the time prescribed. Further,

[B] Defendants failed to duly, timely comply with this Court's Local Rules, *inter alia*, **L. U. Civ. Rule 5 (b) Removals: Required Filing of the Entire State Court Record**, *to-wit*: a) Defendants failed to duly, timely "**file as an exhibit** to its Notice of Removal a copy of **the entire state court record** in the format required by the Administrative Procedures for Electronic Case Filing for the district to which it is removed," per **L.U.Civ.R. 5(b)**, and b) Defendants failed to timely "obtain and electronically **file the complete copy** in the format required...no later than **fourteen days** from the date of removal." **L.U.Civ. R. 5 (b)**. As shown here, c) Defendants' purported "copy of the state court record" (Doc. 2)] does not comply with the true, correct **State Court Record** that was available to the Defendants on 3-15-2017-date of *Notice of Removal* and/or on the **3-29-17 [14 day-bar date of L.U.Civ.R. 5(b)]**. Defendants fatally omitted a true, complete copy of the **full**

state court record, per §§ 1441-7 and L.U.Civ.R.5(b), as shown in attached, ***Certified Copy of The Chancery Dockets*** for March 15, 2017 and March 29, 2017 [14 day-bar date] (**Exhibit “A” hereto**) evidencing fatal deficiencies in “Defendants’ partial record” (Doc. 2). All (A) Summonss and (B) Proofs of Service - omitted from “Defendants’ partial record” (Doc. 2) - must be filed in removal under **1441** and L.U.Civ.R.5(b) to establish a) ***removal jurisdiction, and b) subject matter jurisdiction*** of the Court, and c) ***in personam jurisdiction*** of all parties. Defendants’ failure here is evidenced by **Exhs. “A” hereto.**

2. The *Defendants* bear the ***burden*** of establishing federal jurisdiction over the case, *Jernigan*, 989 F.2d at 815 (5th Cir.1993), and “all doubts about whether federal jurisdiction exists following removal must be resolved against a finding of jurisdiction.” *In re Hot-Head*, 477 F.3d at 323 (5th Cir. 2007). Section 1447(c) provides two bases for remanding cases to state court: (1) a ***defect in the removal procedure, and*** (2) the ***lack of subject-matter jurisdiction***. See *Big Country Vein Relief, L.P. v. Directory Assist., Inc.*, 425 F. App’x 289 (5th Cir. 2011) and §1447(c).

3. This Court lacks A) removal jurisdiction and B) subject-matter jurisdiction [either on federal question’ or diversity’ jurisdiction] and D) lacks prior, superior or in rem jurisdiction of the funds or **Res** deposited in Chancery by 2/17/17 *Agreed Order*. (Doc. 2, *partial*, ‘state court record’).

4. This Court *cannot interfere with the (prior, superior) probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court. Markham v. Allen, 326 U.S. at 494 (1946) and Marshall v. Marshall, 547 U.S. 293 (2006)*. Such applies to *guardianship* matters in a Chancery (“probate”) Court - as here. Contrary to Markham and Marshal, Defendants’ removal attempt takes all of a Chancery guardianship (‘probate’) case- yet, omitted **much** of the state court file: a) Summons, b) Proofs of Service, and c) the **Res** deposited in and held by the Chancery Court.<sup>1</sup>

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<sup>1</sup>**Bauhaus USA v. Copeland**, 292 F.3d 439 (5<sup>th</sup> Cir. 2002) held: “ In the instant case, the settlement proceeds are in the registry of the Mississippi Chancery Court. In Great-West, the proceeds of the settlement were placed in a private Special Needs Trust outside the

5. See Almond v. SRHS, Order C.A.1:14cv446 (S.D. Miss. 1-15-15): “[A] right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff’s cause of action.” *Id.* at 942 (quoting Gully v. First Nat’l Bank in Meridian, 299 U.S. at 112 (1936).) Almond, *Id.* [Emphasis added]. Under Gully’s “essential element test,” none of Chapmans’ **essential** claims are truly *federal* claims, because, i.e., First, Chapmans’ claims for \$110/day **penalties** are only **analogous** claims (*inter alia*, to inform a Chancellor of *analogous* bases for *Equity-relief*, i.e., lack of clean hands, off-sets). Second, like Chapmans’ *constitutional claims, penalties are only contingent*<sup>2</sup> or **alternative** claims, made **if**, and **only if**, Defendants’ purported, erred “ERISA scheme” applies. Third, such claims under the U.S. Constn are **superfluous** (given Chapmans’ *identical, concurrent, claims under under Mississippi’s Constn.*). Such **analogous, alternative** and **concurrent** claims are not “an essential element of (Chapmans’) cause of action” for many good reasons, *inter alia*, a) the Chapmans’ possess and asserted [1] in their *original Amended Complaint* and [2] in their superceding, Second Amended Complaint only **alternative, parallel**, concomitant **State** Law-based claims under *Contract, Takings, Due Process, Clauses of Mississippi’s Constitution*. Almond. Also, b) Defendants’ assertion that Defendants’ erred ‘claims’/‘defenses’ allegedly provide “*federal question jurisdiction*” - are no more “essential” to Chapmans’ claims than SRHS’ removal claims in Almond or in Gully v. First Nat’l Bank in Meridian, 299 U.S. at 112 (1936).

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possession and control of the plan beneficiary. Nevertheless, the defendants in this case, like the Knudsons in *Great-West*, are not in possession of the disputed funds, a fact that Justice Scalia found extremely important in *Great-West*. The Court in *Great-West* characterized the suit in that case as “[a] claim for money due and owing under a contract” and that such a suit is “quintessentially an action at law.”[36] Because the facts in today’s case are, in principle, indistinguishable from those in *Great-West*, we are bound by that decision and hold that § 502(a)(3) does not authorize Bauhaus’ suit. **III.** For reasons stated above, we affirm the district court’s dismissal of this suit for lack of federal jurisdiction because ERISA does not authorize this suit. Consequently, we do not reach the parties’ preemption arguments. **AFFIRMED.** Bauhaus, *Id.* [Emphasis Added].

<sup>2</sup> See Howard v. Burns, No. 15-10952 (5th Cir. April 5, 2016).

6. The Chancery Court has ***prior, superior, concurrent jurisdiction*** of all matters here. Thus, this Court must ***decline jurisdiction*** under ***Peacock v. Thomas***, 516 U.S. 349 (1996), ***Comity, Abstention and Prior Jurisdiction principles*** requiring This Court to honor ***prior, superior, concurrent jurisdiction*** of said Chancery Court. See ***Burford***, 319 U.S. 315 (1943); ***Younger***, 401 U.S. 37 (1971); ***Huffman***, 420 U.S. 592 (1975); ***Colorado River***, 424 U.S. 800 (1976) and like cases. See Chapmans' ***Memorandum*** filed herewith. Also, ***Remand*** is also due as ***Defendants' alleged 'claims and defenses'*** are **barred** by A) ***procedural*** and B) ***substantive law***. See ***Memorandum***.

WHEREFORE, considering all here and in ***Pls.' Second Amended Complaint*** (R. 2) and ***Exhibits*** and accompanying ***Memorandum*** and ***Exhibits***, the Chapmans ***move for remand*** to said Chancery Court, and for "costs and expenses, including attorney fees (and lost interest) incurred as a result of the removal." 28 U.S.C.1447(c). ***Alternatively, if not remanded, they move, per 29 U.S.C. §1132(d)*** and ***Crosby v. La. Health Serv. and Indem. Co.***, 647 F.3d 258 (5th Cir. 2011), for [A] ***Discovery, inter alia, Ex. 'F' to Memorandum*** filed herewith, to secure and review (a) "***The Plan***" and (b) all ***other missing Plan documents*** needed to duly determine all issues, *inter alia, jurisdiction*, and, for [B] ***time*** for Discovery and [C] ***time*** to respond to Defs' ***motions*** (i.e., Doc. 3).

Respectfully submitted, this the 4<sup>th</sup> day of April, 2017.

Charles E. Chapman and Margaret L. Chapman, Parents/Co-Guardians of Alexander C. Chapman ("A.C.C." or "Alex"); Alexander C. Chapman, Plaintiffs

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#### Certificate of Service

I certify, on this date, ***April 4, 2017***, that I electronically filed the foregoing with the Clerk of Court, by using the ECF system which sent notification to all counsel of record, i.e.: Jean C. Bertas, 100 Vision Dr., Ste 400, P.O. Box 14167, Jackson, MS 39211; E-mail: ***jbertas@bakerdonelson.com*** and Stephen J. Buccola, P. O. Box 12535, Jackson, MS 39236; E-mail: ***sbuccola@revclaims.com*** and I served by agreed method, E-mail, the foregoing to the following non-ECF participant: Roland F. Samson, III, Esq., P.O. Box 1417, Gulfport, MS 39502-1417, E-mail: ***rsamson@splawfirm.com***. Counsel for Memorial Hospital at Gulfport.

This 4<sup>th</sup> day of April, 2017.

By: /s/ Matt G. Lyons  
 Matt G. Lyons (MS Bar #1743)